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chaser. If he is bound by the record of a deed which lies outside the chain of title, estoppel works against him; otherwise, not. On this point the courts are almost evenly divided.² In a recent case, therefore, the Supreme Court of South Dakota was bound by no settled rule of law. A statute, presumably declaratory of the common law, provided that title should pass by estoppel. Because a deed given by the grantor before he acquired title was on the record, the court decided that estoppel passed title to the exclusion of a subsequent grantee, although he had traced his vendor's record title back to a patent from the United States government. *Bernardy v. Colonial, etc., Mortgage Co.*, 93 N. W. Rep. 166.

The purpose of the registry acts appears to be to facilitate transfers of property by making it safe to deal with the owners of the record title. Consequently they deprive the grantee under an earlier unregistered conveyance of the common law right which his priority in execution would naturally give him over a subsequent grantee,³ for the later grantee could have no notice from the record of the previous conveyance. By authority, also, a grantee is not charged with notice of a recorded instrument given by one who nowhere appears on the record as owner.⁴ For example, if A sells to B, who fails to record, and transfers to C, who registers his conveyance, this record is not effective against a subsequent purchaser from A. Nor is the record notice to other later grantees than those claiming title from the same grantor.⁵ Thus, if A claims under a grant from B, record of a prior conveyance of the same lands by X, an adverse claimant, does not bind A. Moreover, if an instrument is spread upon any but the correct record, it is valueless.⁶ These results would seem to indicate that a purchaser is expected simply to use reasonable diligence in looking up his vendor's title. It does not seem reasonable that a purchaser be required to examine the record for conveyances made by his grantor at a time when that same record shows that he had not the land to convey. And since the registry system is due to modern legislation, anything in the common law doctrine of estoppel inconsistent with it should be considered overruled.⁷ Therefore it seems unfortunate that a grantee, like the defendant in the principal case, who is so grossly careless as to take a deed from one having neither the legal nor the record title should have preference over a grantee who examines his grantor's record title with all reasonable care.

SUIT BY ONE STATE AGAINST ANOTHER. — Seldom, indeed, has a fundamental question of constitutional interpretation been so strikingly presented as in *The State of South Dakota v. The State of North Carolina et al.*, 24 Sup. Ct. Rep. 269. A private individual holding bonds of the state of North Carolina secured by railway stock in the hands of the state government, donated ten of the bonds to the state of South Dakota. The latter state brought suit, and North Carolina in answer denied the jurisdiction of the court. On this issue the case was decided, the jurisdiction of the court being sustained. Four justices dissented.

² *Warburton v. Mattox, Morris* (Ia.) 367; *Calder v. Chapman*, 52 Pa. St. 359.

³ See *Losey v. Simpson*, 11 N. J. Eq. 246, 249.

⁴ *Irish v. Sharp*, 89 Ill. 261.

⁵ *Leiby v. Wolf*, 10 Oh. 83; 2 Pom. Eq. Juris., 2d ed., § 658.

⁶ *Colomer v. Morgan & Valette*, 13 La. An. 202.

⁷ See *Way v. Arnold*, 18 Ga. 181, 193.

The reasoning of the majority is simple and straightforward. The Constitution, they say, in the second section of the third article extends the judicial power of the United States to controversies between two or more states. The word "controversy," if it means anything, must include a matter so plainly justiciable as a claim for money due on a written promise to pay.¹ The Eleventh Amendment, indeed, forbids suit in a federal court against a state by a citizen of another state or of a foreign state. But as a matter of plain interpretation, sanctioned by the court in time past,² this amendment is concerned only with the status of the real parties before the court. Here the real party plaintiff is a state. It follows, then, that although the bonds in the present case were the gift of a private citizen, the court has jurisdiction.

The position of the minority, although less simple, is equally explicit. They rely on the Eleventh Amendment, and insist that it was intended to prevent the prosecution against any state of a suit arising out of dealings between that state and individuals. In support of this view they cite the decisions in *Hans v. Louisiana*³ and *New Hampshire v. Louisiana*.⁴ In the former case a citizen of Louisiana was not allowed to sue that state, the prohibition being held to be within the spirit if not the letter of the eleventh amendment. In the latter, the state of New Hampshire was not allowed to prosecute claims it held in trust for some of its citizens, on the ground that the real parties plaintiff were citizens of another state.

It is difficult to escape the reasoning of the majority. By the Constitution the federal courts are granted jurisdiction in two distinct classes of cases; the first determined solely by the nature of the controversy, the second by the character of the parties. Suits between two or more states would seem to fall within the second class, and it is hard to read into the qualification of the Eleventh Amendment anything which prevents a state when the real party in interest, from suing another state on a claim like that in the principal case. Nevertheless, the court must have reached its conclusion with great reluctance. The difficulties in the way of enforcing decrees against a state government could not have been absent from the minds of the majority although they dismissed them summarily in their opinion.

POSSESSION AS A BASIS FOR ASSESSMENT OF TAXES. — That a state may tax all property within its jurisdiction, even though the owner be a non-resident, is not open to doubt.¹ In the exercise of this power, however, there is often a practical difficulty in discovering the true owner. To avoid this difficulty, statutes have been passed requiring the person in charge of the property to pay the tax and allowing him to reimburse himself at the expense of the owner. It is clear that where such custodian has funds of the owner in his hands this procedure may be justified on the analogy of garnishment, for the custodian as debtor is simply required to discharge an obligation of his creditor. Thus corporations have been compelled to deduct from pay-

¹ *Baldwin, J., in Rhode Island v. Massachusetts*, 12 Pet. (U. S.) 657, 721.

² *Marshall, C. J., in Cohens v. Virginia*, 6 Wheat. (U. S.) 264, 406.

³ 134 U. S. 1.

⁴ 108 U. S. 76.

¹ *Coe v. Errol*, 116 U. S. 517.